

§ 4.9

days (excluding Saturdays, Sundays and legal public holidays) of its receipt, unless an extension of time is taken in unusual circumstances, when the time for action may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any days of extension granted at the initial request level. A notice of such extension shall be sent to the requester, setting forth the reasons and the date on which a determination of the appeal is expected to be sent. As used in this paragraph, "unusual circumstances" are defined in § 4.6(b)(2).

(d) If a decision on appeal is to make the records available to the requester in part or whole, such records shall be promptly made available as provided in § 4.6.

(e) If no determination of an appeal has been sent to the requester within the twenty day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to such request, giving rise to a right of judicial review as specified in 5 U.S.C. 552(a)(6)(C). When no determination can be sent to the requester within the time limit, the Assistant General Counsel for Administration shall nonetheless exercise due diligence in continuing to process the appeal. When the time limit expires, the requester shall be informed of the reason for the delay, of the date when a determination may be expected to be made, and of his right to seek judicial review. The requester may be asked to forego judicial review until the appeal is determined.

(f) A determination on appeal shall be in writing and, when it denies records in whole or in part, the notice to the requester shall include:

(1) Identification of the specific exemption or exemptions of the Act authorizing the withholding, a brief explanation of how the exemption applies, and, when relevant, a statement as to why a discretionary release is not appropriate;

(2) A statement that the decision is final for the Department;

(3) Advice that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district

15 CFR Subtitle A (1-1-97 Edition)

in which the agency records are located, or the District of Columbia; and

(4) The names and titles or positions of each official responsible for the denial of the appeal.

(g) The Assistant General Counsel for Administration shall send a copy of each determination on appeal to the central public reference facility referred to in § 4.4(c) where it will be indexed and kept available for public inspection and copying.

[53 FR 6972, Mar. 4, 1988; 53 FR 16058, May 5, 1988, as amended at 57 FR 28781, June 29, 1992]

§ 4.9 Fees.

(a) *Definitions.* The following definitions are applicable to this section.

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(4) of this section). Searches may be done manually or by computer using existing programming.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining documents located in response to a request that is

for a commercial use (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term “commercial use request” refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Department must determine the use to which a requester will put the documents requested. Moreover, where the department has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Department shall seek additional clarification before assigning the request to a specific category.

(6) The term “educational institution” refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term “non-commercial scientific institution” refers to an institution that is not operated on a “commercial” basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular products or industry.

(8) The term “representative of the news media” refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities

include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of “freelance” journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Department may also look to the past publication record of a requester in making this determination.

(b) *Application—Uniform fee schedule.* The fees described in this section apply to FOIA requests processed by all units of the Department. They reflect rates for the full allocable direct cost of search, review, and duplication. The fees to be charged shall be based on the requester category.

(1) The four specific categories and chargeable fees are:

Category	Chargeable service
(i) Commercial Use Requesters.	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters.	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media.	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Category	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction	\$.07 per page.
(B) Computer tape or printout reproduction.	Actual cost, including operator time.
(C) Other reproduction (i.e., microfilm, microfiche, microform).	Actual direct cost, including operator time.

§ 4.9

Category	Rate
(iv) Review of records (includes preparation for release, i.e. excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Charging interest.* Interest may be charged to those requesters who fail to pay fees charged in a timely fashion. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest will be charged at the rate specified in section 3717 of title 31 U.S.C. and will accrue from the date of the billing. The Department reserves the right to utilize consumer reporting agencies, and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (Pub. L. 97-365).

(c) *Waiver or reduction of fees.* (1) Documents shall be furnished without charge, or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. To assure that the two basic requirements for waiver are met, Commerce shall rely on the following factors in making a determination on the fee waiver request:

(i) The subject of the request (whether the subject of the requested records concerns the operations or activities of the government);

(ii) The informative value of the information to be disclosed (whether the disclosure is likely to contribute to an understanding of government operations or activities);

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure (whether disclosure of the requested information will contribute to public understanding);

(iv) The significance of the contribution to public understanding (whether the disclosure is likely to contribute significantly to public understanding of government operations or activities);

(v) The existence and magnitude of a commercial interest (whether the requester has a commercial interest that

15 CFR Subtitle A (1-1-97 Edition)

would be furthered by the requested disclosure);

(vi) The primary interest in disclosure (whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester).

(2) Additionally, a fee shall not be charged, or alternatively it may be reduced, in the following instances:

(i) Requests for Department records made by a Federal agency, Federal court (excluding parties), Congressional committee or subcommittee, the General Accounting Office, or the Library of Congress, are not made under the Act, and fees payable under this part do not apply.

(ii) The records are requested by a state or local government, an intergovernmental agency, a foreign government, a public international organization, or an agency thereof, and when it is determined by a responsible Department official that it is an appropriate courtesy, or the records are for purposes that are in the public interest and will promote the objectives of the Act and of the Department.

(iii) A fee shall not be charged if the allowable charges are less than or equal to the cost of routine collection and processing of the fee. Therefore, if the total of charges due for processing a request is \$20 or less, no fee will be charged.

(d) *Payment of fees.* The following conditions shall apply to payment of fees charged under this part.

(1) A search fee provided in paragraph (b) of this section is chargeable even when no records responsive to the request are found, or when the records requested are determined by the responsible Department official to be totally exempt from disclosure. If the estimated search or duplication charges exceed \$25 the requester shall be notified of the estimated amount of search or duplication fees, unless the requester has previously advised the Department of a willingness to pay an amount sufficient to cover the estimated fee. Such notice shall offer the requester the opportunity to confer with Department personnel with the

object of reformulating the request in order to reduce the cost.

(2) A requester may be required to make an advance payment (i.e., payment before work is commenced or continued on a request) if the estimated or determined allowable charges that a requester may be required to pay will exceed \$250 or the requester has previously failed to pay a fee charged in a timely manner (i.e., within 30 days of the date of the billing).

(i) When the estimated charges exceed \$250, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees. If the requester has no history of prompt payment of FOIA fees, the Department shall require an advance payment of an amount up to the full estimated charges.

(ii) If a requester has previously failed to pay a fee charged in a timely manner, the Department shall require the requester to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the Department will process the request.

(3) Whenever the Department acts pursuant to paragraph (d)(2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) will begin only after the agency has received payment of the required fee.

(4) Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records or a portion of the records are made available to the requester.

(5) Payment of fees shall be made in cash or preferably by check or money order payable to "Treasury of the United States", and they shall be paid or sent to the unit stated in the billing notice or, if none, to the unit handling the request. Where appropriate, the responsible official may require that payment be made in the form of a certified check.

(6) If an advance payment of an estimated fee exceeds the actual total fee

by \$1 or more, the difference shall be refunded to the requester.

(7) When the responsible official reasonably believes that a requester or group of requesters acting in concert is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the unit may aggregate any such requests and charge accordingly.

(e) *Other charges.* (1) This part does not apply to any special statistical compilation, study, or other record requested pursuant to statutes specifically providing for setting the level of fees for particular types of records such as 15 U.S.C. 1525-1527. The fee for the performance of such service is the actual cost of the work involved in compiling the record. All monies received by the Department in payment of the cost of this work are deposited in a separate account administered under the direction of the Secretary, and may be used to defray the ordinary expenses incidental to the work.

(2) The full cost of other special services will be assessed. Such services would include:

(i) Certifying that records are true copies; and

(ii) Sending records by special methods such as express mail, etc.

[53 FR 6972, Mar. 4, 1988; 53 FR 16058, 16211, May 5, 1988]

APPENDIX A—DEPARTMENT ADMINISTRATIVE ORDER 205-12—PUBLIC INFORMATION

SECTION 1. *Purpose*—.01 This order, and the rules and other materials which implement it, are designed to carry out the responsibilities of the Department of Commerce under the Freedom of Information Act, as amended (5 U.S.C. 552), hereinafter referred to as "the Act."

.02. This revision updates and clarifies the provisions of the order (dated June 29, 1967) which it supersedes, in light of the amendments to the Act which become effective February 19, 1975. Section 7, "Compulsory Process Requesting Documents or Testimony" contained in the superseded order, is now found in Department Administrative Order 218-5, to be published separately in the FEDERAL REGISTER.

SEC. 2 *Authorities*—This order is issued pursuant to the Act: 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and other authority vested by law in the Secretary applicable to the dissemination of records and

other information of the Department and charges for services related thereto.

SEC. 3. *Policies*—.01 The Department of Commerce, in fulfilling its statutory missions to foster, promote and develop the foreign and domestic commerce of the United States and to administer the specific programs entrusted to it, regularly develops, collects, analyzes, and disseminates facts, statistics, consensus, charts, scientific findings, technology, and other information, and performs other services, in order to assist the business community and other segments of the public, according to their needs and interest. This information which the Department develops, collates, and disseminates is generally made readily available, either without charge or by purchase, to the affected persons and to anyone else who may be interested, through publications, reprints of regulations (by subscription or otherwise), press releases, special reports, correspondence and personal interviews or conferences with staff, speeches, and other media. It is the policy of the Department to continue its regular practices of disseminating information to the public prepared as a part of its program responsibilities, to the fullest extent legally permissible and economically feasible, and to continue to handle public requests for such information (which may include records) in the usual manner through its regular facilities and channels, as distinguished from those requests for records subject to 5 U.S.C. 552(a)(3) which are to be made and handled in accord with the rules established in and pursuant to subsections 5.03 and 5.04 of this order.

In carrying out this policy, the officials designated in subsection 4.01 of this order shall: (a) Establish and continue an effective program of communicating to the public the useful information obtained or developed in the fulfillment of their organizational missions; (b) publicize the availability of such informational materials in their rules or by other practical means so that the public shall utilize the regular informational programs of the Department, rather than resorting to the formal procedures for requesting records established pursuant to 5 U.S.C. 552(a)(3); and (c) insure that any such information which is given to individuals or special groups shall also be made available to the general public in accord with subsections 5.01 and 5.02 of this order, when and to the extent such information is subject to publication or inspection under 5 U.S.C. 552(a)(1), (2), or (5).

.02 Officials responsible for determining, in accord with the Act and this order:

(a) What materials are to be published in the FEDERAL REGISTER; (b) What and how materials are to be made available for public inspection and copying, including indexing; and (c) What and how records which are requested are to be made available; shall,

where discretion exists in making such determinations, take an affirmative and constructive view of the requirements of the Act. Accordingly, in making rules and specific determinations, they shall among other factors: (1) Provide such information to the affected public as well as enable it to deal effectively and knowledgeably with their organizations; (2) keep within the limits of demonstrable need the use of the legal authorities which permit the withholding of information and records; (3) apply principles of equal treatment to requests for records; (4) consider disclosure to be the rule rather than the exception; (5) consider the public convenience as well as the efficient conduct of their organizations' business; (6) act in a timely manner; and (7) be guided by materials prepared by the Department of Justice and the Office of General Counsel of the Department, and by applicable court decisions.

SEC. 4. *Delegation of authority*—.01 The Secretary of Commerce is responsible for the effective administration of the Act and other laws applicable to the dissemination of records and other information of the Department. Aside from the Secretary's retaining authority for his immediate office, or as he otherwise may act, authority is hereby delegated to the following officials of the Department to decide initially whether or not to make publicly available records and other information subject to the Act which are in the possession of their organizations, in accord with the provisions of the Act, this order and rules supplementing it, other applicable law, and as may be otherwise provided by the Secretary:

a. Secretarial Officers, for their respective offices and for the Department staff units reporting to them (as defined in Department Organization Order 1-1, "Mission and Organization of the Department of Commerce" (35 FR 19704, December 27, 1970)), as amended.

b. Heads of operating units of the Department (as defined in Department Organization Order 1-1).

.02 Although the officials having authority under subsection 4.01 of this section may permit employees within their organizations to make records and information publicly available under the Act, they shall redelegate authority initially to deny such records and information only to a limited number of officers or employees under them without power of further redelegation.

.03 The authority to make final decisions on appeal of initially denied requests for records is hereby delegated to the General Counsel of the Department without power of further redelegation.

.04 The General Counsel of the Department, and his designees, shall provide legal services to enable the officials designated in subsections 4.01 and 4.02 of this section to discharge their respective duties and responsibilities under and pursuant to this order,

and shall make legal interpretations of questions arising thereunder. The General Counsel shall also act as the focal point within the Department for consultation or other communication with the Department of Justice with respect to any actions to be taken in connection with the Act, this order, and rules implementing it.

.05 Program officials shall provide all support and assistance necessary to enable the General Counsel to perform the functions delegated in this order. This shall include (i) keeping the Office of the General Counsel informed of Freedom of Information Act requests received by the unit; (ii) providing prompt responses to Office of the General Counsel instructions, or requests for assistance; (iii) as requested, allowing the Office of the General Counsel access to relevant records; and (iv) promptly consulting with the Office of the General Counsel regarding any legal issues which arise during the processing of a request.

b. The Office of the Inspector General shall comply with the provisions of this order except that the Office of the Inspector General need not allow the Office of the General Counsel access to records to the extent that (i) information contained therein might reveal the identity of a confidential source, or (ii) the Inspector General determines that disclosure to Office of the General Counsel would interfere with an audit, investigation, or prosecution.

SEC. 5. *Functions and responsibilities*—01 *Publication in the FEDERAL REGISTER* (5 U.S.C. 552(a)(1) of the Act).

a. The following information of the Department and its component organizations shall be separately stated and currently published in the FEDERAL REGISTER for the guidance of the public.

1. Descriptions of the central and field organizations and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may secure information, make submittals or request, or obtain decisions;

2. Statements of the general course and method by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

3. Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

4. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by their agencies; and

5. Each amendment, revision, or repeal of the foregoing.

b. The information contained in paragraph 5.01a of this subsection shall be published in the FEDERAL REGISTER in the form of or included in:

1. Department Organization Orders, including any supplements and appendices thereto. The Assistant Secretary for Administration shall cause such materials to be published in the FEDERAL REGISTER. The Department Organization Orders and their supplements and appendices contain, among other information, the descriptions of the various organizations, the descriptions of the various organizations of the Department, and in many instances the other information indicated in subparagraphs 5.01a.1 and 2. of this subsection.

2. Department Administrative Orders, including any supplements or appendices thereto.

3. Other Office of the Secretary or operating unit directives.

4. Rules and orders contained in the various Titles of the Code of Federal Regulations assigned to the Office of the Secretary and to the operating units of the Department.

5. General notices.

6. Other forms of publications when incorporated by reference in the Federal Register with the approval of the Director of the Federal Register.

c. Officials responsible for determining what materials are to be submitted for publication in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1) shall consider, among other factors, in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) need not be published. However, it may be decided, in accord with subsection 3.02 of this order, that publication even of such matters should in some instances and respects be made.

2. That matters which are reasonably available to the class of persons affected thereby and which have been or are to be incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register are deemed to be published in the FEDERAL REGISTER. In such cases, the standards and procedures for incorporation by reference established by the Director of the Federal Register (See 1 CFR Part 51; 37 FR 23614, November 4, 1972) shall be followed.

3. That matters to which members of the public do not have to resort or by which they are not to be adversely affected, or which do not impose burdens, obligations, conditions, or limitations upon persons affected, need not be published in the FEDERAL REGISTER under 5 U.S.C. 552(a)(1). However, the policy considerations expressed in subsection 3.02 of this order may in certain instances suggest the publication of such matters.

4. That no person shall in any manner be required to resort to or be adversely affected by any matter required to be published in the FEDERAL REGISTER under 5 U.S.C. 552(a)(1) when it is not so published. However, actual and timely notice given to such a person having such actual notice is equally bound as one having constructive notice by FEDERAL REGISTER publication. Nevertheless, such actual notice should as a matter of policy be in addition to, rather than instead of, publication.

5. That "currently publish" as provided in 5 U.S.C. 552(a)(1) means promptly at the time that the action occurs.

.02 Availability of materials for inspection and copying; indexing (5 U.S.C. 552(a)(2) and (5) of the Act).

a. The head of each operating unit of the Department shall for his unit, and the Assistant Secretary for Administration shall for the officials, officers and units referred to in paragraph 4.01a. of this order, in accordance with rules which they shall cause to be published in the FEDERAL REGISTER, make available for public inspection and copying the following materials, unless such materials are promptly published and copies offered for sale:

1. Final opinion (including concurring and dissenting opinions), as well as orders, made in the adjudication of cases.

2.. Those statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER.

3. Administrative staff manuals and instructions to staff that affect a member of the public.

4. Where applicable, a record of the final votes of each member of an agency in every proceeding when the agency has more than one number. (The terms "agency proceeding" and "agency" are defined in 5 U.S.C. 551, as amended by 5 U.S.C. 552(e).

5. An index, currently maintained, which provides identifying information for the public as to any matter (a) which has been issued, adopted, or promulgated since July 4, 1967, and (b) which is required to be made available or published pursuant to 5 U.S.C. 552(a)(2). It is hereby determined, subject to subsequent redetermination by the Assistant Secretary for Administration pursuant to changed circumstances, that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each such index and supplements thereto. Copies of such indexes shall be provided upon request at a cost not to exceed the direct cost of duplication.

b. The rules published in the FEDERAL REGISTER under paragraph 5.02a of this subsection shall include provisions for the time, place, copying fees, and any procedures applicable to making such materials available

at facilities or otherwise for public inspection and copying.

c. The Assistant Secretary for Administration shall establish and maintain a centralized public reference facility for the inspection and copying of materials subject to 5 U.S.C. 552(a)(2) and (5). The head of an operating unit may, with the approval of the Assistant Secretary for Administration, establish for this organization a separate place for making the materials subject to 5 U.S.C. 552(a)(2) and (5) available to the public for inspection and copying, and publish appropriate rules applicable thereto approved by the Assistant Secretary for Administration.

d. The officials responsible for determining the materials to be available for public inspection and copying under paragraph 5.02a of this subsection shall consider, among other factors, in promulgating the published rules or in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C 552(b) are not required to be made available. Nonetheless, they may be made available in any particular respect if it is determined that this would better serve the public interest.

2. That they may, to the extent required to prevent a clearly unwarranted invasion of personal privacy, delete identifying details from an opinion, statement of policy, interpretation, staff manual or instruction, or other materials, when it is made available or published. However, in each case the justification for the deletion shall be explained fully in writing. Such action is to be taken in order to provide the public with those information materials called for under 5 U.S.C. 552(a)(2), while at the same time protecting the medical, family or other personal privacy rights of the individuals involved in such agency materials. Agency explanations for deletions of identifying details should provide such information as can be furnished without defeating the purpose of the deletion provision. When an agency has a number of recurring deletion situations, it may in its implementing rules or other public notice specify the applicable reasons for such deletions, and cite the rule in the preamble to each of the covered documents, rather than contain the complete explanation in each document.

3. That distinction should be made between those materials (a) which do and which do not affect any member of the public, and (b) which are and which are not to be relied upon, used or cited as precedent by the agency against any private person or party. Those materials specified in 5 U.S.C. 552(a)(2) which affect the public and which have precedential effect shall be made available for inspection and copying, and also included in the index, as provided in this order. However, since the basic purpose of this section of the Act is to disclose to the interested

members of the public essential information which will enable them to deal effectively and knowingly with an agency, materials which provide such information should be included in the appropriate facilities.

4. That an advisory interpretation made by an agency on a specific set of facts which is requested by and addressed to a particular person need not be made generally available under paragraph 5.02a. of this subsection if it is not to be cited or relied upon by any official of the agency as a precedent in the disposition of other cases. Nonetheless, if it may serve any useful public purpose, any such interpretation may be made publicly available upon the deletion of identifying details to the extent necessary to protect personal privacy.

5. That the agency is not precluded using as precedent against any affected person those matters specified in subparagraphs 1.3. of paragraph 5.02a of this subsection as to which a person has actual and timely notice of the terms thereof, even though they have not been indexed and either made available or published. If the agency practice is to furnish such notices, it is more desirable that it do so in addition to, rather than instead of, indexing and making them publicly available hereunder, in recognition of the purpose of 5 U.S.C. 552(a)(2) to make the end product materials of the administrative process available to the public.

6. That matters which are published in the FEDERAL REGISTER in accordance with 5 U.S.C. 552(a)(1) are not required to be made available under 5 U.S.C. 552(a)(2) for public inspection and copying nor need they be indexed (the Federal Register has its own index). However, to the extent that it would be useful and practicable to index and provide such published information to the public for ready reference, it should be included.

7. That an index provides sufficient identifying information for the public if a person who exercises diligence may familiarize himself with the materials through use of the index.

8. That an alternative to making materials available to the public for inspection and copying is to promptly publish and offer them for sale to the public. Such published materials, however, are subject to the indexing requirement. If it would help the public and it is practical to do so, a copy of such published materials should also be made available in any facilities established for public inspection, and if permissible, copies of the publications should be made available for sale therein.

9. That materials required to be made available or published under 5 U.S.C. 552(a)(2), but which were adopted or issued by an agency prior to July 4, 1967, may at any time be used, relied upon or cited as precedent by the agency irrespective of whether they are listed in the agency's index. Offi-

cials, however, may, to the extent they deem it practicable and helpful to the public, also index such materials in whole or in part.

03. *Availability of records upon request* (5 U.S.C. 552(a) (3), (4), and (6) of the Act).

a. The Assistant Secretary for Administration shall cause to be published in the FEDERAL REGISTER rules stating the time, place, fees and procedures to be followed, with respect to making records of the Department promptly available to any person requesting them, as provided in 5 U.S.C. 552(a) (3), (4) and (6).

b. The rules published in the FEDERAL REGISTER pursuant to paragraph 5.03a. of this subsection shall, insofar as is practicable, be complete, precise, and workable, suitable for the information of agency personnel and the public alike, and shall include provisions, among other matters, for the following:

1. Information as to the place to make requests, when requests will be deemed received by the Department for purposes of the time limits contained in 5 U.S.C. 552(a)(6), the timely handling of requests, and the making of initial determinations concerning the availability of the records requested.

2. Timely notice to the requester, as applicable, that a requested record does not exist, has been disposed of as provided by law, or is not in the possession or control of the Department.

3. A procedure whereby the time limits for responding to requests for records or appeals from denials may be extended, as authorized by 5 U.S.C. 552(a)(6)(B), and wherein a failure of the agency to respond in a timely manner may be considered a denial of the request.

4. Consultation with other operating units or offices within the Department, or with other Federal executive agencies, when there is a mutual agency interest or concern in the record or its contents and there is a question as to its availability. The determination as to availability should be made by the predominantly interested agency, if there is one. When a record requested from the Department is the exclusive concern of another executive agency, the request shall be promptly referred to that other agency, and the requester so notified.

5. A procedure for administrative appeal of a request for a record initially denied in whole or in part. The appeal procedure shall include provisions which insure that: (i) The requester may file an appeal, in writing, within thirty days of receipt of an initial denial; (ii) an appeal shall be considered received when properly addressed to the General Counsel; (iii) appeals shall be decided without right of the requester for a personal appearance, oral argument, or hearing; (iv) timely decisions on appeals or other notices concerning them shall be made in writing, and communicated to the requester; (v) if the decision is wholly or partly in favor of the requester, the General Counsel shall

Pt. 4, App. A

make the particular records of information available to the requester or order that such be done; and to the extent that the decision is adverse to the requester, it shall briefly state the reason for the decision and the identity of the official responsible for making it, (vi) whenever applicable, requesters shall be effectively notified of their right to seek judicial review.

6. A schedule of fees as authorized by the Act, with procedures which (i) put requesters of records on timely notice as to substantial search and copying fees estimated to be incurred with respect to a request; (ii) attempt to insure that requester pay the chargeable fees for work to be done; (iii) which provide for appropriate waiver or reduction of fees; and (iv) which do not intend to discourage requests for records under the Act. Work, services, publications, or documents which the agency as part of its regular mission has been performing or producing or will be performed or produced for members of the public or for those who are engaged in the transaction of official business of or with the Government, without charge, by user charge, or by publication or subscription charge, are to be distinguished from those records properly requested under 5 U.S.C. 552(a)(3) and the fees charged thereunder.

c. The officials designated in subsections 4.01 and 4.02 of this order who are responsible for initially determining whether any records properly requested under the Act may be made available, shall include in their consideration:

1. Whether the records are of the type referred to in subsection 3.01 of this order, and the request is to be handled in accord with the policy set forth therein;

2. Whether the records are subject to 5 U.S.C. 552(a) (1), (2), or (5) and have been otherwise made publicly available pursuant to paragraphs 5.01a or 5.02a of this section;

3. Whether the requester has complied with the published rules covering the making of requests and the payment of fees;

4. Whether the records or information contained in them are matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b), and if so whether they are not to be disclosed or whether, if such discretion exists, it would nevertheless be in the public interest to make the record or information available in whole or in part;

5. Whether any reasonably segregable portion of the record can be disclosed after deletion of the portions which it is determined should not be disclosed.

d. The officials who establish a facility as provided in paragraph 5.02 of this section may utilize the facility to:

1. Receive and assist in processing requests for records;

2. Receive from officials the requested records which are made available, maintain

15 CFR Subtitle A (1–1–97 Edition)

custody of them and supervise their inspection and copying by requesters;

3. Arrange for making certified and other copies of available records;

4. Collect and account for fees established for services connected with the requests;

5. Return records after inspection to their place of custody;

6. Act as a central communication center between the requesters and the organizations involved in recordkeeping and officials making determinations as to their availability; and

7. Provide reasonable assistance to persons requesting records, including explanations of the applicable procedure and other rules, and making referrals to sources of information available under regular informational programs of the Department.

e. The Assistant Secretary for Administration shall establish such standard forms, procedures and instructions as he deems necessary for processing requests for records, maintaining records of related expenditures, and obtaining information for the Departmental report required by 5 U.S.C. 552(d).

04. *Special review requirements.*—a. The General Counsel or one of his designees shall be consulted before any initial denial is issued.

- b. As provided in paragraph 7.03c. of DAO 205-12, the Operating Unit Public Affairs Office shall receive a copy of each request at the same time as the Action Office. If the Public Affairs Officer wishes to monitor and/or comment on any response to a particular request prior to transmittal, the Officer shall notify the Action Office within three (3) working days after receiving a copy of the request. The Action Office shall cooperate with the Public Affairs Officer in this effort; and give due consideration to any recommendations or comments from the Officer. In addition, the Director of the Office of Public Affairs or his or her designee shall be informed before any decision on an appeal from an initial denial is issued.

- c. As provided in Part B, Chapter IV, subsection 5.06f. of the Department's Handbook of Security Regulations and Procedures, appeals of initial denials based, even in part, on the ground that the matter is exempted from disclosure under 5 U.S.C. 552(b)(1) (classified information) shall be referred to the Departmental Information Security Program Committee. That Committee shall conduct a declassification review and determine if the record(s) involved may be made available to the public.

- d. Whenever, on appeal from an initially denied request, the General Counsel and the concerned Secretarial Officer or operating unit head cannot agree on whether applicable exemptions should be waived, as provided in subsection 03c.4. of this section, the matter shall be promptly referred to the Secretary for resolution.

.05 *Annual Report* (5 U.S.C. 552(d) of the Act).

a. The Assistant Secretary for Administration shall prepare and transmit to the Congress on or before March 1 of each year the annual report by the Act.

b. To assist in the preparation of the report, each official specified in subsection 4.01 of this order, shall, no later than January 31 of each year, provide the Assistant Secretary for Administration with the information specified in the Act and such other information as he may require.

SEC. 6. *Supplementary rules*—.01 The Secretary may from time to time issue such supplementary rules or instructions as he deems appropriate to carry out the purposes of this order.

.02 Each duly authorized official may issue rules covering his respective area of responsibility designed to implement this order, and which are consistent herewith and with any rules issued by the Assistant Secretary for Administration.

SEC. 7. *Effect on other orders*. This order supersedes Department Administrative Order 205-12 of June 29, 1967, as amended. Any other prior orders, rules, or instructions, or parts thereof, the provisions of which are inconsistent or in conflict with the provisions of this order, are hereby constructively amended or superseded.

APPENDIX B—FREEDOM OF INFORMATION PUBLIC FACILITIES AND ADDRESSES FOR REQUESTS FOR RECORDS

The following public reference facilities have been established within the Department of Commerce for: (a) Public inspection and copying of materials from various units within the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C.(a)(3); (b) furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) receipt and processing requests for records under 5 U.S.C. 552(a)(3).

Commerce units that have separate mailing addresses are noted below. Requests should be addressed to the unit which the requester knows or has reason to believe has possession, control, or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, room 6020, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania, NW., Washington, DC 20230. Phone (202) 377-4115. This facility serves the Office of the Secretary and all other units of the Department not identified

below as explained at 15 CFR 4.4(c) and (d). Bureau of the Census, Chief, Program and Policy Development Office, U.S. Department of Commerce, room 2430, Federal Building 3, Washington, DC 20233. Phone (301) 763-2758.

The Bureau of the Census maintains a separate facility for inspection of (a)(2) records. The location is room 2455, Federal Building 3, Suitland, Maryland 20233.

Bureau of Economic Analysis, Public Reference Facility, U.S. Department of Commerce, room 1115, Tower Building, 1401 K Street, NW., Washington, DC.

Mailing address: Freedom of Information Control Desk, Office of Administration, Office of Economic and Statistical Affairs, U.S. Department of Commerce, room 4838, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone 377-3308.

Economic Development Administration, Freedom of Information Records Inspection Facility, U.S. Department of Commerce, room 7001, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-4687. Mailing address of Regional EDA offices:

- Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Liberty Square Building; First floor, 105 South 7th Street, Philadelphia, Pennsylvania 19106.
- Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, suite 1820, 401 West Peachtree Street, NW., Atlanta, Georgia 30308-3510.
- Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, room 670, 1244 Speer Boulevard, Denver, Colorado 80204.
- Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, suite A-1630, Chicago, Illinois 60604.
- Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Jackson Federal Building, room 1856, 915 Second Avenue, Seattle, Washington 98174.
- Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Grant Building, suite 201, 611 East 6th Street, Austin, Texas 78701.

Bureau of Export Administration, Freedom of Information Records Inspection Facility, U.S. Department of Commerce, room 4525, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-5653.

International Trade Administration, Freedom of Information Records Inspection Facility, U.S. Department of Commerce, room 4102, Herbert C. Hoover Building, 14th Street

Pt. 4, App. C

and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-3031.

Minority Business Development Agency, Freedom of Information Office, U.S. Department of Commerce, room 5073, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-2881.

The Minority Business Development Agency maintains a separate facility for public inspection of (a)(2) records. The location is room 5078B, Herbert C. Hoover Building, Washington, DC 20230.

National Institute of Standards and Technology, Freedom of Information Records Inspection Facility, room E106, Administration Building, Gaithersburg, Maryland 20234. Phone (301) 975-2389.

Mailing address: National Institute of Standards and Technology, Freedom of Information Request Control Desk, U.S. Department of Commerce, room A-1105, Gaithersburg, Maryland 20234.

National Oceanic and Atmospheric Administration, Public Reference Facility, room 714 WSC-5, 6010 Executive Boulevard, Rockville, Maryland 20852. Phone (301) 443-8967.

National Technical Information Service, Freedom of Information Records Inspection Facility, room 209, Forbes Building, 5285 Port Royal Road, Springfield, Virginia 22161. Phone (703) 487-4670.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, U.S. Department of Commerce, room 4717, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20504. Phone (202) 377-1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Public Search Room, room 1A01, Crystal Plaza 3, Arlington, Virginia 20231. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 8, Washington, DC 20231. Phone (703) 557-4035.

United States Travel and Tourism Administration, Freedom of Information Request Control Desk, U.S. Department of Commerce, room 1524, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-3812.

[56 FR 20533, May 6, 1991]

APPENDIX C—OFFICIALS AUTHORIZED TO MAKE INITIAL DENIALS OF REQUESTS FOR RECORDS

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations.)

15 CFR Subtitle A (1–1–97 Edition)

Accordingly, the Director for Federal Assistance and Management Support is specifically authorized to amend or revise this appendix from time to time in order to reflect changes.

OFFICE OF THE SECRETARY

Executive Secretariat, Director.

Office of the Deputy Secretary: Associate Deputy Secretary.

Office of Business Liaison: Director.

Office of Consumer Affairs: Director.

Office of Space Commerce: Director.

Office of the Assistant Secretary for Legislative and Intergovernmental Affairs: Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.

Office of the Inspector General: Counsel to the Inspector General. Deputy Counsel to the Inspector General.

Office of the General Counsel: Deputy General Counsel. Assistant General Counsel for Administration. Director of Intelligence Liaison.

Assistant Secretary for Administration

Office of the Administrative Law Judge: Office Manager.

Office of Civil Rights: Director.

Office of Financial Management: Director.

Office of Federal Assistance and Management Support: Director.

Office of Federal Assistance: Director.

Office of Budget Operations: Director.

Office of Management Support: Director.

Departmental Freedom of Information Officer

Office of Budget, Planning and Organization: Director.

Office of Management and Organization: Director.

Office of Budget: Director.

Office of Program Planning and Evaluation: Director.

Office of Personnel: Director.

Office of Personnel Operations: Director.

Office of Information Resources Management: Director.

Office of Procurement and Administrative Services: Director.

Office of Administrative Services Management: Director.

Office of Federal Property Programs: Director.

Office of Publications: Director.

Office of Security: Director.

Office of Procurement: Director.

Office of Major Systems Procurement: Director.

Office of Procurement Operations: Director.

Office of Procurement Management: Director.

Office of Small and Disadvantaged Business Utilization: Director.

Office of the Secretary, Commerce

Pt. 4, App. C

ECONOMIC AND STATISTICAL AFFAIRS

Office of Administration: Director.
Bureau of Economic Analysis: Director.
Bureau of the Census: Chief, Program and Policy Development Office.

TECHNOLOGY ADMINISTRATION

Under Secretary for Technology: Deputy Under Secretary for Technology. Assistant Secretary for Technology Policy. Chief Counsel. Deputy Chief Counsel.

National Institute of Standards and Technology: Director of Administration. Deputy Director of Administration.

National Technical Information Service: Director. Associate Director for Administration.

ECONOMIC DEVELOPMENT ADMINISTRATION

Chief Counsel.
Deputy Chief Counsel.

EXPORT ADMINISTRATION

Under Secretary.
Deputy Under Secretary.
Director for Administration
Assistant Secretary for Export Administration.

Director, Office of Technology and Policy Analysis.

Director, Office of Foreign Availability.

Director, Office of Export Licensing.

Deputy Assistant Secretary for Industrial Resource Administration.

Assistant Secretary for Export Enforcement.

Director, Office of Export Enforcement.

Director, Office of Antiboycott Compliance.

Director, Office of Enforcement Support.

INTERNATIONAL TRADE ADMINISTRATION

Deputy Under Secretary for International Trade

Deputy Assistant Secretary for Planning

Director, Office of Public Affairs

Director, Office of Legislative and Intergovernmental Affairs

International Economic Policy

Director, Office of Policy Coordination

Director, Office of Multilateral Affairs

Director, Office of Africa

Director, Office of the Near East

Director, Office of South Asia

Director, Office of Western Europe

Director, Office of European Community Affairs

Director, Office of Eastern Europe, Russia and Independent States

Director, Office of Latin America

Director, Office of Mexico

Director, Office of Canada

Director, Office of the PRC and Hong Kong

Director, Office of the Pacific Basin

Director, Office of Japan Trade Policy
Director, Office of Japan Commercial Programs

Import Administration

Director, Foreign Trade Zones Staff

Director, Office of Policy

Director, Statutory Import Programs Staff

Director, Office of Antidumping Compliance

Director, Office of Countervailing Compliance

Director, Office of Countervailing Agreements Compliance

Director, Office of Antidumping Investigations

Director, Office of Countervailing Investigations

Director, Office of Accounting

Trade Development

Director, Office of Trade and Economic Analysis

Director, Office of Export Promotion Coordination

Director, Office of Planning, Coordination and Resource Management

Director, Office of Aerospace

Director, Office of Computers and Business Equipment

Director, Office of Microelectronics, Medical Equipment and Instrumentation

Director, Office of Telecommunications

Director, Office of Automotive Affairs

Director, Office of Materials, Machinery and Chemicals

Director, Office of Energy, Environment and Infrastructure

Director, Office of Textiles and Apparel

Director, Office of Consumer Goods

Director, Office of Export Trading Company Affairs

Director, Office of Finance

Director, Office of Service Industries

U.S. and Foreign Commercial Service

Director, Office of Information Systems

Deputy Assistant Secretary for International Operations

Deputy Assistant Secretary for Domestic Operations

Director, Planning and Resource Management Staff

Manager, Export Promotion Services

Administration

Director, Office of Organization and Management Support

Director, Office of Personnel

Director, Office of Financial Management

Director, Office of Information Resources Management

MINORITY BUSINESS DEVELOPMENT AGENCY

Freedom of Information Officer.

§ 4a.1

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Under Secretary.
Assistant Secretary.
Director, Office of Public Affairs.
Director, NOAA Corps.
General Counsel.
Assistant Administrator for Ocean Services and Coastal Zone Management.
Assistant Administrator for Fisheries.
Assistant Administrator for Weather Service.
Assistant Administrator for Environmental Satellite, Data, and Information Service.
Assistant Administrator for Oceanic and Atmospheric Research.
Director, Environmental Research Laboratories.
Director, Office of Administration.
Director, Eastern Administrative Support Center.
Director, Central Administrative Support Center.
Director, Western Administrative Support Center.
Director, Mountain Administrative Support Center.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Deputy Assistant Secretary.
Chief Counsel.
Legal Advisor.

PATENT AND TRADEMARK OFFICE

Solicitor, Deputy Solicitor.

UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

Under Secretary.
Director, Office of Management and Administration.

[56 FR 50233, May 6, 1991, as amended at 57 FR 28781, June 29, 1992; 57 FR 48969, Oct. 29, 1992]

PART 4a—CLASSIFICATION, DE- CLASSIFICATION AND PUBLIC AVAILABILITY OF NATIONAL SE- CURITY INFORMATION

Subpart A—Classification of National Security Information

Sec.

- 4a.1 General.
- 4a.2 Director, Office of Security.
- 4a.3 Classification levels.
- 4a.4 Classification authority.
- 4a.5 Duration of classification.

15 CFR Subtitle A (1–1–97 Edition)

Subpart B—Declassification

- 4a.6 General.
- 4a.7 Systematic review for declassification.
- 4a.8 Mandatory review for declassification.
- 4a.9 Requests under the Privacy Act and the Freedom of Information Act involving classified records.
- 4a.10 Presidential information.
- 4a.11 Foreign government information.
- 4a.12 Public availability of declassified information.

Subpart C—Access to Classified Information

- 4a.13 Access by persons outside the Executive branch.
- 4a.14 Access by industrial, educational, and commercial entities.
- 4a.15 Access by historical researchers and former presidential appointees.
- 4a.16 Access by foreign nationals, foreign governments, international organizations and immigrant aliens.

AUTHORITY: Sec. 5.3(b), E.O. 12356; 47 FR 14874, April 6, 1982; 47 FR 15557, April 12, 1982.

SOURCE: 48 FR 20040, May 4, 1983, unless otherwise noted.

Subpart A—Classification of National Security Information

§ 4a.1 General.

Executive Order 12356 provides the only basis for classifying information within the Department of Commerce, except as provided in the Atomic Energy Act of 1954. The policy of the Department of Commerce is to make information concerning its activities available to the public consistent with the need to protect the national defense or foreign relations as required by the interests of the United States and its citizens. Accordingly, security classification shall be applied only to protect the national security.

§ 4a.2 Director, Office of Security.

The Director is responsible for (a) acting on all suggestions, complaints, and appeals not otherwise resolved, concerning the implementation and administration of E.O. 12356 and implementing directives, and (b) deciding all appeals from denials of requests for national security information under the Mandatory Review provision of E.O. 12356, when the initial denial was based on continued classification under the